

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2414 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

VAKHATSINH PRABHATSINH

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for Petitioner
M/S MG DOSHIT & CO for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 01/08/96

ORAL JUDGEMENT

Vakhatsinh Prabhatsinh bearing buckle no. 1195
has preferred this petition under Article 226 of the
Constitution of India.

2. The petitioner joined the service as police constable in the year 1965 and at the time of his recruitment he had not passed SSC examination. In the year 1978 he passed SSC examination. At the time of passing of the said examination, there was a policy of the Government to give reservation of 33% in the promotional cadre of head constables for the constables who have passed the SSC examination. The petitioner was promoted as head constable in the year 1980, to be precise on 3.4.80. But as there was reversion of one PSI to the post of head constable he was also reverted on 8.7.80. He was reverted only on the ground that there was no vacancy in the cadre of head constable. It is the case of the petitioner that thereafter in the year 1981 there were 24 posts of head constables and by the order dated 13.5.81, 24 unarmed constables were promoted to the cadre of head constable Gr.II and in the said list his name did not figure. He therefore, gave an application dated 16.5.81 and made a representation that he ought to have been considered for promotional post of head constable Gr.II. But by reply dated 25.1.81 he was informed that he could not be promoted to the cadre of head constable Gr.II only because he was SSC examination passed in view of the change in the policy of the Government as per the order order issued on 6.8.79. After he received the reply from the DSP he made a representation to the IGP but he could not get any favourable order and therefore, he filed the present petition to get promotion and he further seeks a declaration that he should be deemed to have been promoted from the date he was promoted i.e. 3.4.80 and the order issued on 8.7.80 to revert him to the post should be held to be non existent In the alternative he prayed that he should get promotion from 13.5.81 when 24 persons were promoted.

3. Along with the petition the petitioner has produced certain annexures with this petition. Though he was directed to give translation of the same he had not given the translation of the same in spite of the matter was adjourned for supplying the said translation on number of occasion. Today neither the petitioner nor his advocate is present. I have perused the annexures and considered the same with the help of Mr.Dave, A.G.P. who has translated the said documents to me by reading each document in the open court.

4. The petitioner has clearly admitted that he was promoted to the cadre of head constable Gr. II on 3.4.80. He has also clearly admitted in his writ

petition that he was reverted on 8.7.80 only because there was no vacancy to the post of head constable Gr.II. The petitioner has nowhere averred in his petition that he has been superseded by any body and that though he was eligible to get promotional post on a particular date he was denied the same on account of any illegal or malafide act of the respondent . Now he has averred in his petition that on 13.5.81, 24 persons from the cadre of unarmed police constable were promoted to the cadre of head constable Gr.II. It is pertinent to note that he nowhere avers in the petition that any of those 24 persons were junior to him in the cadre of unarmed constables. He has also not specifically mentioned that out of those 24 persons who were promoted from unarmed constables to the post of head constable Gr.II was not having passed SSC examination. Even assuming that some of those 24 persons had not passed SSC examination as the position stands on the said date, on 13.5.81, Government had withdrawn its policy to give 33 percent of promotional post to the constables who have passed SSC examination. Therefore, the petitioner could not claim and contend that as he has passed SSC examination he was entitled to get promotion of the head constable as per the Government policy which was there formerly. It is settled law that Government can alter the terms and conditions of its employees unilaterally and the court will not interfere with the Government policy.

It must be also mentioned here that when the petitioner was promoted on 3.4.80 said policy of giving 33% posts to the constables who have passed SSC examination was not in vogue. It is very pertinent to note that the petitioner has nowhere averred in his petition that at the time of his promotion on 3.4.80 he had superseded certain unarmed constables only on the ground of he having passed SSC examination.

5. Thus it would be quite clear that on 13.5.81 when 24 persons were promoted there were vacancies of 24 posts in the cadre of head constables Gr.II and those 24 persons who were promoted in the said vacant posts were senior to the present petitioner. There was no question of superstition of the petitioner herein. It is pertinent to note that the petitioner has nowhere averred in his petition that till the date of the petition there was vacant posts of head constables Gr.II and on numerous occasions they were filled in by superseding him and by denying him promotion. Thus from the averments made in the petition itself it would be quite clear that there is claim of the petitioner that he was ever superseded and

any person junior to him was promoted in the cadre of head constable Gr.II by denying him his claim of promotion. It seems that the petitioner has in his mind only the claim of getting promotion earlier on account of having passed SSC examination in the quota of 33 percent as per the old policy. But said policy has been abandoned by the Government on 6.8.79 and therefore, he cannot insist that the same must be followed and he must be given promotion.

6. Thus I hold that there is no denial of any fundamental right of the present petitioner and the respondent has not violated any fundamental right of the petitioner and therefore, he is not entitled to get any relief. Hence the petition is dismissed. Rule discharged. In the circumstances, I direct the parties to bear the respective costs.

(S.D.Pandit.J)